SUPREME COURT, U. S.

FILED

DEC 22 1967

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 877

ANDREW NICHOLSON,

Petitioner,

v.

C. D. CALBECK, DEPUTY COMMISSIONER,
CROWN STEVEDORING COMPANY AND
TEXAS EMPLOYERS' INSURANCE ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS CROWN STEVEDORING COMPANY AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION IN OPPOSITION

CARL G. STEARNS
S. G. KOLIUS
ED BLUESTEIN, JR.
Bank of the Southwest Building
Houston, Texas 77002

Attorneys for Respondents

Of Counsel:

FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI

FIDELITY PRINTING COMPANY, INC., HOUSTON

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement of the Case	3
Reasons for Refusing the Writ	6
Argument	
I. Dockside structures are part of the land and injuries thereon are not covered by the Longshoremen's Act.	7
II. Legislative history shows dockside injuries not covered	14
III. Admiralty Extension Act did not enlarge Longshoremen's Act	16
Conclusion	18
Certificate of Service	19
Appendix A — District Court Opinion	1a
Appendix B — Circuit Court Opinion	7a
Appendix C — Compensation Order	9a

LIST OF AUTHORITIES

Cases

American Export Lines, Inc. v. *Revel,* 266 F. 2d 82 (4th Cir. 1959)	9, 17
Boston Metal Co. v. *O'Hearne,* 329 F. 2d 504 (4th Cir. 1964), certiorari denied 379 U.S. 824	18
Calbeck v. *Travelers Ins. Co.,* 370 U.S. 114 (1962)	8, 12
Conner v. *United States,* 87 F. Supp. 847 (E.D. Pa. 1940)	10
East v. *Oosting,* 245 F. Supp. 51 (E.D. Va. 1965)	13, 17
Economy Light Co. v. *United States,* 256 U.S. 113 (1921)	8
Hastings v. *Mann,* 226 F. Supp. 962 (D.C. N. Car. 1964), affirmed 340 F. 2d 910 (4th Cir. 1965), certiorari denied 380 U.S. 963	10

PAGE

Houser v. *O'Leary*, 383 F.2d 730 (9th Cir. 1967), affirming 253 F. Supp. 417 (D. Ore. 1966) 13, 17

Interlake Steamship Co. v. *Nielsen*, 338 F. 2d 879 (6th Cir. 1964), certiorari denied 381 U.S. 934 17

Jeffers v. *Foundation Company*, 85 F. 2d 24 (2d Cir. 1936) 10

John W. McGrath Corp. v. *Hughes*, 264 F. 2d 314 (2d Cir. 1959), certiorari denied 360 U.S. 931 12

Johnson v. *Traynor*, 243 F. Supp. 184 (D. Md. 1965)....13, 16, 17, 18

Johnston v. *Marshall*, 128 F. 2d 13 (9th Cir. 1942) certiorari denied 317 U.S. 629 12

Massman Construction Co. v. *Bassett*, 30 F. Supp. 813 (E.D. Mo. 1940), rev. on other grounds 120 F. 2d 230 (8th Cir. 1941) 10

Michigan Mutual Liability Co. v. *Arrien*, 344 F. 2d 640 (2d Cir. 1965), certiorari denied 382 U.S. 835 ..... 12, 13

Netherlands American Steam Nav. Co. v. *Gallager*, 282 Fed. 171 (1922) 10

O'Keeffe v. *Atlantic Stevedoring Co.*, 354 F. 2d 48 (5th Cir. 1965) 10

Seifort v. *Keansburg Steamboat Co.*, 19 F. Supp. 967 (S.D.N.Y. 1937) 10

Southern Pacific Co. v. *Jensen*, 244 U.S. 205, (1917)..... 7, 14

Stansbury v. *Atlantic & Gulf Stevedores, Inc.*, 159 So. 2d 728 (La. App. 1964), writ refused 161 So. 2d 277 (La. 1964) 14

State Industrial Commission v. *Nordenholt Corp.*, 259 U.S. 263 (1921) 7

Stott v. *Thompson*, 14 N.E. 2d 246 (Ill. App. 1938), certiorari denied 305 U.S. 639 14

Swanson v. *Marra Bros.*, 328 U.S. 1 (1946) 7

T. Smith & Son, Inc. v. *Taylor*, 276 U.S. 179 (1928) 7

Tarabocchia v. *J. W. McGrath Corp.*, 270 F. Supp. 605 (S.D.N.Y. 1966) 13, 14

The Haxby, 95 Fed. 170, (E.D. Pa. 1899) 9

The Senator Rice, 234 Fed. 101 (E.D.N.Y. 1916) 9

Travelers Insurance Company v. *Shea*, 382 F. 2d 344 (5th Cir. 1967) 11, 17

United States v. *Appalachian Power Co.*, 311 U.S. 377 (1940) 8

Wiper v. *Great Lakes Engineering Works*, 340 F. 2d 727, 730 (6th Cir. 1965), certiorari denied 382 U.S. 812 ..... 13, 17

Statutes

	Page
Admiralty Extension Act of 1948, 62 Stat. 496, 46 U.S.C. 740	16
Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U.S.C. 901, et seq	2
33 U.S.C. 903(a)	14
33 U.S.C. 921	5

Text

Gilmore & Black, *Admiralty*, p. 346 (1957)	14

Miscellaneous

House Report No. 2287, 85th Congress, 2nd Session, 1958 U.S. Code Cong. News, page 3843	15
Senate Report No. 973, 69th Congress, 1st Session, page 16	15
Senate Report No. 1593, 80th Congress, 2nd Session, 1948 U.S. Code Cong. Service, page 1899	17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 877

ANDREW NICHOLSON,

Petitioner,

v.

C. D. CALBECK, DEPUTY COMMISSIONER,
CROWN STEVEDORING COMPANY AND
TEXAS EMPLOYERS' INSURANCE ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS CROWN STEVEDORING COMPANY AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION IN OPPOSITION

Respondents Crown Stevedoring Company and Texas Employers' Insurance Association pray that the petition for a writ of certiorari be denied.*

* Respondents Crown Stevedoring Company and Texas Employers' Insurance Association are designated in the caption of the Petition only by an "et al," and the opening paragraph of the Petition omits identifying all of the parties. The Petition acknowledges these respondents are adverse parties by compliance with Rule 33(1), and service of the petition on counsel for these respondents has been made as the Petition's Certificate of Service reflects. The opinion below of the District Court and the Compensation Order of the Deputy Commissioner further reflect the adverse party status of respondents.

OPINIONS BELOW

The opinion of the District Court (Appendix A) is reported at 266 F. Supp. 103. The opinion of the Court of Appeals for the Fifth Circuit (Appendix B) is not yet reported.

The Compensation Order of the Deputy Commissioner (Appendix C) is not published.

JURISDICTION

The opinion of the Court of Appeals for the Fifth Circuit was rendered on October 31, 1967. The petition for a writ of certiorari was docketed in this Court on December 4, 1967.

The jurisdiction of this Court to review the judgment complained of by writ of certiorari is conferred by 28 U.S.C.A. 1254(1) and 2101(c).

QUESTION PRESENTED

Whether the Longshoremen's and Harbor Workers' Compensation Act of 1927 should be interpreted to provide workman's compensation benefits to a longshoreman working and injured upon a pier or wharf.

STATUTE INVOLVED

The Longshoremen's and Harbor Workers' Compensation Act of 1927 (44 Stat. 1424, 33 U.S.C. 901, *et seq.*) is involved, and the pertinent section thereof (§ 903) provides:

"Section 903. COVERAGE

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law."

STATEMENT OF THE CASE

Petitioner, Andrew Nicholson, was employed on May 26, 1960, by respondent Crown Stevedoring Company to work as a longshoreman at Manchester Terminal on the Houston Ship Channel. The SS MARY SOPHIA was in port and respondent Crown was performing the stevedoring work for the vessel. Petitioner received injuries to his legs while standing or walking on the Manchester Terminal wharf. Two small fork-lift trucks were moving the vessel's steel hatch beams from one location on the wharf to another. Petitioner was struck and injured when the beams slid from their resting place on the fork-lift trucks and struck the back of his legs. Petitioner was not propelled or knocked from the wharf into the water. He was not lifted off the wharf or suspended by the ship's gear. His injuries were sustained in their entirety and without dispute on the solid non-floating structure of the pier or wharf. The pier or wharf was erected on pilings and concrete blocks which rested in the bed of the waters adjacent to the Houston Ship Channel in the Port of Houston, Texas.

Two photographs are included as part of this Statement of the Case. Figure 1 (which was Respondent's Exhibit No. 5 at the compensation hearing) shows the dockside area of the wharf where Nicholson was injured. He was near the warehouse on the left of the picture. Figure 2 (Respondent's Exhibit No. 9) is a view of the wharf from the channel. The wharf's exterior facing of timber and its interior concrete supports are seen. The Court of Appeals, after seeing these photographs, stated as a matter of law that the waters beneath the wharf were not navigable. Respondents believe the decisions below are correct without regard to whether there was any water at all under the wharf, or its character, but the pictures certainly support the Court of Appeals on this point.

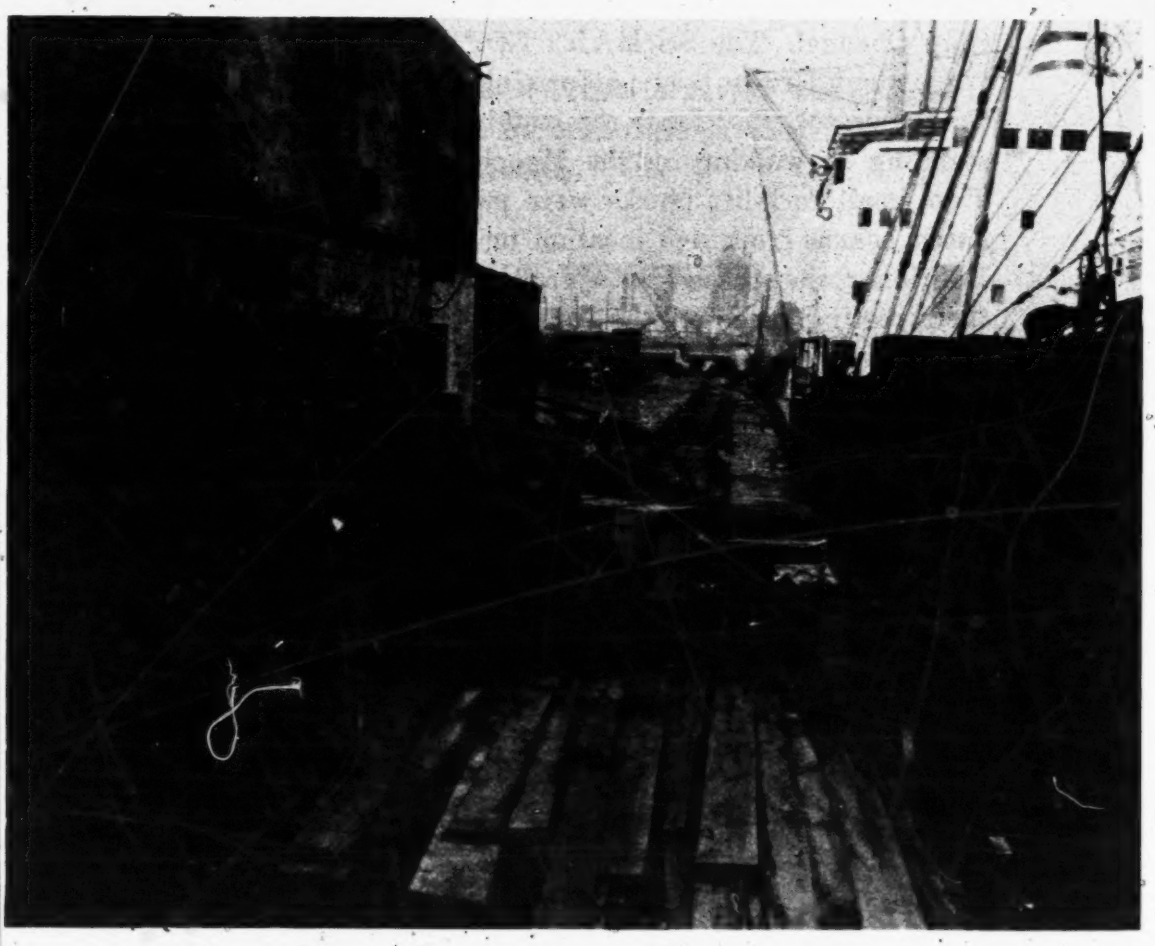

Figure 1. Area of wharf where accident occurred.

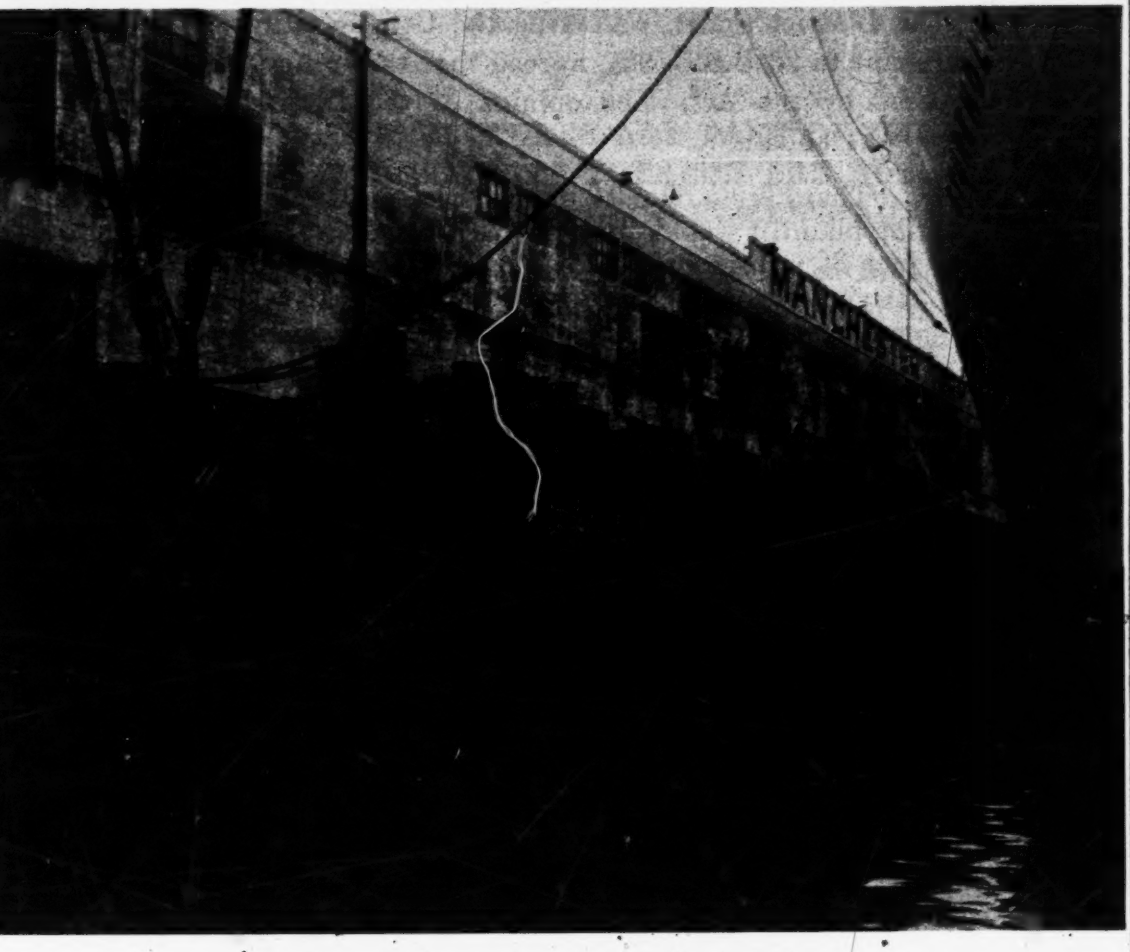

Figure 2. View of wharf from the channel.

Petitioner was paid compensation benefits by respondent Crown and its insurance carrier, respondent Texas Employers' Insurance Association, under the Texas Workmen's Compensation Act.

Petitioner's claim for benefits under the Longshoremen's Act was rejected by the Deputy Commissioner, whose Compensation Order (App. C) concluded:

> "There is no authoritative determination that a dockside accident comes within the provisions of the Longshoremen's and Harbor Workers' Compensation Act."

The District Court, reviewing the Compensation Order pursuant to 33 U.S.C. 921, agreed that the injury was not covered by the Act. The opinion of the District Court (App. A) holds:

> "There is no dispute in this case as to the fact that the plaintiff was injured on the wharf. In light of this fact, it is this court's opinion that the Deputy Commissioner correctly rejected the plaintiff's claim for compensation under the Longshoremen's Compensation Act."

The Court of Appeals for the Fifth Circuit affirmed *per curiam* (App. B) leaving undisturbed the decision that petitioner was not entitled to benefits under the Longshoremen's Act.

REASONS FOR REFUSING THE WRIT

Whether the Longshoremen's Act provides a compensation remedy for dockside injuries is the only issue in this case. For forty years this act has been administered and interpreted without a single case ever holding the act applied to an injury which occurred in its entirety upon a dock, wharf or pier. The petition for writ of certiorari should be refused for the following reasons:

1. The decisions of the Deputy Commissioner, District Court, and Court of Appeals were correct.

2. There is no conflict of decisions with any court of appeals or with this Court.

3. This Court, in a series of cases, has laid out a pattern for interpreting the Longshoremen's Act which leaves dockside injuries under state compensation.

ARGUMENT

I.

DOCKSIDE STRUCTURES ARE PART OF THE LAND AND INJURIES THEREON ARE NOT COVERED BY THE LONGSHOREMEN'S ACT

An almost endless collection of cases can be found in which piers, wharves or docks, permanently affixed to the land beneath navigable waters, are declared to be part of the land. Among the leading cases so holding are *State Industrial Commission* v. *Nordenholt Corp.*, 259 U.S. 263 (1921); *T. Smith & Son, Inc.* v. *Taylor*, 276 U.S. 179 (1928); and *Swanson* v. *Marra Bros.*, 328 U.S. 1 (1946).

Before compensation under the Longshoremen's Act validly could be awarded to petitioner in this case, the above three cases from the Supreme Court of the United States, as well as a long line of Circuit and District Court opinions, would have to be completely ignored or overruled. In each of these three cases an injury to a longshoreman working on a dock or wharf was involved. In each case the Court considered the question of whether the recovery being sought was jurisdictionally proper. *In each case the Supreme Court held that the dock or wharf was an extension of land and that the propriety of the remedy sought must be considered on the basis that the dock or wharf was land and that the injury occurred on land.* In the first two of these cases, the Supreme Court held that state compensation validly applied because the injury was one that occurred on land and was not beyond the constitutional limits of state compensation as set forth in *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917).

In the third of the above Supreme Court cases, *Swanson* v. *Marra Bros.*, 328 U.S. 1 (1946), the Court had before it the question of whether the Longshoremen's Act could ap-

propriately be applied to cover an injury to a longshoreman working on a pier alongside a vessel loading cargo when he was struck and injured by an object falling from the vessel. The Supreme Court, in considering the appropriate remedies available to the longshoreman against his employer, used the following language in reaching its decision that the dockside locale of the injury precluded benefits under the Longshoremen's and Harbor Workers' Act:

> "... *But since this act is restricted to compensation for injuries occurring on navigable waters, it excludes from its own terms and from the Jones Act any remedies against the employer for injuries inflicted on shore.* The Act leaves for the injured employees in such cases to pursue the remedies afforded by the local law, which this Court has often held permits recovery against the employer for injuries inflicted by land torts on his employees who are not members of the crew of a vessel." (Emphasis added).

The petition claims a conflict in the decision below with the decision of this Court in *Calbeck* v. *Travelers Ins. Co.*, 370 U.S. 114 (1962). The decision below, stripped of argumentative embellishments, is simply that maritime workers injured on a wharf are not covered under the Act because they are not "upon the navigable waters of the United States (including any dry dock)." *Calbeck* holds that the Longshoremen's Act is applicable to maritime employees engaged in new ship construction on vessels afloat in navigable waters because they are "upon the navigable waters". Nowhere in *Calbeck* does this Court direct the Longshoremen's Act to be applied to dockside injuries. The conflict claimed does not exist.

The petition alternatively claims the decision is contrary to the opinions of this Court in *United States* v. *Appalachian Power Co.*, 311 U.S. 377 (1940), and *Economy Light Co.* v. *United States*, 256 U.S. 113 (1921). Neither case

dealt with the Longshoremen's Act, nor for that matter do these cases even involve maritime injuries. These cases are disputes between utility companies and the United States over the power of Congress to regulate activities on public waters capable of being used as highways for interstate commerce. The navigability of a waterway for purposes of the commerce power of Congress bears no meaningful relationship to a determination that an injury on a wharf is not "upon the navigable waters", and the cases have no proper application to the question presented. No conflict as alleged exists.

A very brief review of the authorities shows that piers, wharves and similar structures have uniformly been characterized as part of the land, and not part of the water about them. In *American Export Lines, Inc.* v. *Revel,* 266 F. 2d 82 (4th Cir. 1959), a longshoreman was injured while standing on a pier in Norfolk, Virginia, while loading a vessel. The Court of Appeals stated:

> "Since Revel was injured *while standing on the dock, (an extension of the land) his remedies are restricted to those afforded by the local law,* Swanson v. Marra Bros., 328 U.S. 1; Industrial Commission v. Nordenholt, 259 U.S. 263 (1922); cf. the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S. Code, Sec. 903 . . ." (Emphasis added).

The rule was stated in *The Senator Rice,* 234 Fed. 101 (E.D.N.Y. 1916), in these words:

> "The rule apparently now well-established is to the effect that a platform erected upon posts or piles and given the character of a dock or land structure, even though entirely isolated from the land and standing in navigable water, is a part of the land itself . . .".

And in *The Haxby,* 95 Fed. 170 (E.D. Pa. 1899), this language is found:

> "Where, then, was the injury done in contemplation of the law, upon the land (the pier being land) or upon the navigable waters of the river? . . . I incline to the view that the injury should be regarded as done upon land."

For additional cases following the rule that a dock, pier, wharf or other man-made structure must be considered as part of the land, reference is made without further discussion to the cases of *Hastings* v. *Mann,* 226 F. Supp. 962 (D.C. N.Car. 1964), affirmed 340 F. 2d 910 (4th Cir. 1965) certiorari denied 380 U.S. 963; *Conner* v. *United States,* 87 F. Supp 847 (E.D. Pa. 1940); *Seifort* v. *Keansburg Steamboat Co.,* 19 F. Supp. 967 (S.D.N.Y. 1937); *Jeffers* v. *Foundation Company,* 85 F. 2d 24 (2d Cir. 1936); *Massman Construction Co.* v. *Bassett,* 30 F. Supp. 813 (E.D. Mo. 1940), rev. on other grounds, 120 F. 2d 230 (8th Cir. 1941); and *Netherlands American Steam Nav. Co.* v. *Gallager,* 282 Fed. 171 (1922).

What have the circuit courts done and said about whether the Longshoremen's Act and its "upon navigable waters" coverage includes dockside injuries? The Fifth Circuit, in addition to the decision below, previously considered the question in two cases. In *O'Keeffe* v. *Atlantic Stevedoring Co.,* 354 F. 2d 48 (5th Cir. 1965), a difficult factual issue of where the injury occurred highlighted the court's statement (page 50) of the rule. "Docks, wharves, piers and similar structures are regarded as extensions of the land and injuries occurring there are not under the coverage of the Act." The longshoreman was killed when lifted from the dock, caused to strike the side of the ship and finally dropped into the water between the ship and wharf. Confusion over where the injury had occurred had resulted in conflicting decisions on coverage by the Deputy Commissioner and the District Court. The court wrote, on page 50:

> "The difficult problem is the determination as to the place where the injury occurred. It is the place where the injury occurred that determines whether there is Longshoremen's Compensation coverage. *If the ship's boom had swung over the dock, striking and causing the death of Curry, we would not be able to find a basis for recovery under the Act. The place of the injury would have been the dock.*" (Emphasis added).

More recently the Fifth Circuit decided *Travelers Insurance Company* v. *Shea,* 382 F. 2d 344 (5th Cir. 1967). The opinion below relies on this case. A floating outfitting pier permanently attached to the shore and bottom of the Sabine River was the location of the ship repairman's injury. The opinion, a copy of which appears as Appendix B in the Petition, turns on the conclusions that the structure was an extension of land and that the waters beneath it had been removed from navigation. The injury was found under these circumstances not to have been within the coverage of an act which requires the site of injury to be "upon the navigable waters of the United States (including any dry dock)." A petition for writ of certiorari is now pending as No. 788, McCollough v. Travelers Insurance Company, before the Court.

Whether the waters beneath dockside structures are considered removed from navigation, as the court below discussed, would not seem to be a necessary finding in support of the decision. Where the injury occurs on an extension of land, such as the wharf in this case, the navigability of the waters beneath the structure should not be a material inquiry. It is the land extension, not the water, upon which the injury occurs. Examination of the evidence in this case, however, supports the court below in its declaration that the water was not navigable. The reference in the opinion to a "canoe" was not intended to define the type vessel capable of navigating between the pilings. This reference, as Figure No. 2 on page 5 reflects, was a somewhat barbed

rejection by the court of appeals below that the waters beneath the wharf were freely navigable.

The Ninth Circuit Court of Appeals, in a case involving the identical issue, has affirmed the rejection of a claim for compensation under the Longshoremen's Act for a dockside injury in *Houser* v. *O'Leary*, 383 F.2d 730 (9th Cir. 1967), affirming 253 F. Supp. 417 (D. Ore. 1966). Judge Merrill's succinct opinion, just published in the December 11, 1967 Advance Sheet No. 2 of 383 F.2d at 730, notes the absence of any conflict in decisions on this issue. The opinion further stresses that the Supreme Court in *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114 (1962), strongly suggests that the administration of the Longshoremen's Act is best served by the clearly defined application of the act to injuries on navigable waters, leaving to state compensation the shoreside cases. The Ninth Circuit reaffirmed the correctness of its prior decision on this issue in *Johnston* v. *Marshall*, 128 F.2d 13 (9th Cir. 1942).

The Court's attention is directed to *John W. McGrath Corp.* v. *Hughes*, 264 F. 2d 314 (2d Cir. 1959), certiorari denied 360 U.S. 931. In this case, the Second Circuit Court of Appeals noted that an injury occurring on the dock would not be compensable under the Longshoremen's Act. The Court stated at 316:

> ". . . But we must still be satisfied that there was sufficient evidence for the Deputy Commissioner properly to find that the alleged incident truly happened, arising out of and in the course of employment, 33 U.S.C.A. § 902(2), *and occurring not on the dock* but upon the navigable waters of the United States, 33 U.S.C.A. § 903(a);." (Citing Johnston v. Marshall, supra, and Jeffers v. Foundation Co., supra.) (Emphasis added).

The Second Circuit Court of Appeals has more recently spoken again on the coverage question, and in *Michigan*

Mutual Liability Co. v. *Arrien,* 344 F. 2d 640 (2d Cir. 1965), certiorari denied 382 U.S. 835, reaffirmed that it would not apply the Act to a longshoreman injured on the wharf. The claimant was injured on a temporary skid bridging the space between vessel and wharf, and the court found this to be analogous to a gangway, and not part of the wharf.

In *Wiper* v. *Great Lakes Engineering Works,* 340 F. 2d 727, 730 (6th Cir. 1965), certiorari denied 382 U.S. 812, the Sixth Circuit Court of Appeals clarified its position and stated that docks and wharves are considered extensions of land and that it is the place where the injuries occur which determines coverage under the Longshoremen's Act.

On the district court level, and to the same effect, is the outstandingly comprehensive opinion of Judge Dorsey Watkins in *Johnson* v. *Traynor,* 243 F. Supp. 184 (D. Md. 1965). Two longshoremen on the pier hooking up steel beams in a rail car were injured, one fatally, when a draft of cargo hoisted by the ship's cargo gear, swung back and struck them. Since the injuries occurred on the pier, Judge Watkins concluded the compensation remedy would be under state law, and not under the Longshoremen's Act. The opinion discusses and rejects the identical arguments advanced by petitioner, and almost every case on the question here involved is carefully considered.

Other recent District Court decisions directly in point and in accord include *Houser* v. *O'Leary,* 253 F. Supp. 417 (D. Ore. 1966), affirmed 383 F. 2d 730 (9th Cir. 1967) (longshoremen injured in fall from rail car on pier while hooking onto a load of creosoted piling); *East* v. *Oosting,* 245 F. Supp. 51 (E.D. Va. 1965) (consolidated cases of a cargo checker on pier under shed struck on leg by bale of wool falling off fork lift truck, and a longshoreman hooking up logs in open rail car on pier crushed by logs attached to ship's gear); and *Tarabocchia* v. *J. W. McGrath Corp.,*

270 F. Supp. 605 (S.D.N.Y. 1966) (longshoreman fell from pier warehouse to the pier below). In each case compensation claims under the Longshoremen's Act were made. In each case the courts found no jurisdiction because the situs of each injury was a pier or wharf, and such locations were not "upon the navigable waters" as required under the Longshoremen's Act.

State court cases have likewise determined that dockside injuries are not within the coverage of the Longshoremen's Act because they occurred on land; e.g., *Stansbury* v. *Atlantic & Gulf Stevedores, Inc.*, 159 So. 2d 728 (La. App. 1964), writ refused 161 So. 2d 277 (La. 1964), and *Stott* v. *Thompson*, 14 N.E. 2d 246 (Ill. App. 1938), certiorari denied 305 U.S. 639.

II.

LEGISLATIVE HISTORY SHOWS DOCKSIDE INJURIES NOT COVERED

It was settled law prior to the passage of the Longshoremen's Act that dockside injuries to longshoremen fell within the coverage of state compensation laws, but that state laws could not constitutionally be extended to provide compensation for injuries on board vessels being loaded by these longshoremen. *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917). When Congress passed the Longshoremen's Act, it left undisturbed the applicability of state compensation laws to dockside injuries. Congress in fact "never wanted to pass the Longshoremen's Act in the first place", and was "determined to leave as much as possible to the state commissioners". See Gilmore & Black, *Admiralty*, p. 346 (1957). This intent is seen in that portion of Section 903(a) which provides:

> "Compensation shall be payable under this Chapter . . . only . . . if recovery for the disability or death

through Workmen's Compensation proceedings may not validly be provided by State Law."

The purpose of the Act is stated in Senate Report No. 973, 69th Congress, First Session, at page 16, which is quoted in *Johnson* v. *Traynor,* 243 F. Supp. 184 (D. Md. 1965):

> "The purpose of this bill is to provide for compensation, in the stead of liability, for a class of employees commonly known as 'longshoremen.' These men are mainly employed in loading, unloading, refitting and repairing ships; but it should be remarked that *injuries occurring in loading or unloading are not covered unless they occur on the ship or between the wharf and the ship* so as to bring them within the maritime jurisdiction of the United States." (Emphasis by the Court).

In addition, the House Report accompanying the Longshoremen's and Harbor Workers' Safety Program Act, 1958 U.S. Code Cong. News, page 3843, states:

> "The Longshoresmen's and Harbor Workers' Compensation Act provides compensation for injuries suffered by longshoremen, ship repairmen, ship servicemen, and workers in related employment when they are working for private employers within the Federal maritime jurisdiction on the navigable waters of the United States, including drydocks. *These employees are subject to the protection of State safety standards when performing work on docks and in other shore areas . . .*".

Petitioner's argument that Congress intended the Longshoremen's Act to have a coverage as broad as the "admiralty jurisdiction" is supported by quotations from various witnesses who testified at Senate or House hearings on the Act. While some of these witnesses wanted an act broad enough to "cover the contract, cover the job and not simply

the man when he is on the ship" (Mr. L. D. Clark for the Bureau of Labor Statistics, Senate Hearings, p. 40, as quoted in *Johnson* v. *Traynor,* 243 F. Supp. 184 (D. Md. 1965). The language of the act, its overall legislative history (including the absence of any coverage amendments following interpretive decisions), and the decisions of the courts demonstrate these witnesses did not get such an Act.

The various forms of bills and the changes in coverage language of Section 903 leading to the final enactment of "upon the navigable waters" — instead of "within the admiralty jurisdiction" — point to a narrowing of coverage rather than a broader intent. This history is accurately and carefully considered by Judge Watkins in *Johnson* v. *Traynor, supra,* 243 F. Supp. 184, 188-197 (D. Md. 1965).

III.

ADMIRALTY EXTENSION ACT DID NOT ENLARGE LONGSHOREMEN'S ACT

Petitioner suggests that the Longshoremen's Act's coverage was extended by virtue of the enactment of the Admiralty Extension Act of 1948, 62 Stat. 496, 46 U.S.C. 740. This act merely extends a remedy in admiralty for money damages on account of injury to persons or property caused by a vessel on navigable waters, notwithstanding that such injury was done or consummated on land. The act was in no way designed to extend coverage under the Longshoremen's Act. No mention of the Longshoremen's Act is contained in the Extension of Admiralty Act. The act is concerned with tort damages caused by vessels. It is not concerned with compensation remedies between employees and employers.

The legislative history of the Admiralty Extension Act shows that Congress did not extend the effect of that act

beyond its specific terms. See Senate Report No. 1593, 80th Congress, 2nd Session, 1948 U.S. Code Cong. Service, page 1899:

> *"This legislation is not intended* to affect existing rights of seamen against their vessels or against private companies who operate Government owned vessels, or *to affect remedies which may exist against other parties involved by existing law in any appropriate forum."* (Emphasis added).

The argument that the Admiralty Extension Act extended the coverage under the Longshoremen's Act to dockside injuries has been flatly rejected by the courts in *Travelers Insurance Co.* v. *Shea,* 382 F.2d 344 (5th Cir. 1967); *Houser* v. *O'Leary,* 383 F.2d 730 (9th Cir. 1967); *American Export Lines, Inc.* v. *Revel,* 266 F.2d 82 (4th Cir. 1959); *Johnson* v. *Traynor,* 243 F. Supp. 184 (D.Md. 1965); and *East* v. *Oosting,* 245 F. Supp. 51 (E.D.Va. 1965).

Petitioner's reliance on the Sixth Circuit's opinion in *Interlake Steamship Co.* v. *Nielsen,* 338 F.2d 879 (6th Cir. 1964), certiorari denied 381 U.S. 934, is particularly misplaced. The case certainly did not hold that the Admiralty Extension Act brought dockside injuries within the coverage of the Longshoremen's Act. The injury resulted when the compensation claimant drove his car off the dock. He died of a skull fracture occasioned when he struck the frozen surface of the navigable waters of Lake Erie, and the court had no difficulty in placing the situs of injury and death "upon the navigable waters" and within the coverage of the Longshoremen's Act. Less than two months later, in *Wiper* v. *Great Lakes Engineering Works,* 340 F.2d 727 (6th Cir. 1965), certiorari denied 382 U.S. 812, the Sixth Circuit had occasion to discuss *Nielsen* and pointedly remarked that Longshoremen's Act coverage was based on the injury or death being in navigable waters and not on the dock.

The reported opinion cited by appellant in *Boston Metal Co.* v. *O'Hearne,* 329 F. 2d 504 (4th Cir. 1964), certiorari denied 379 U.S. 824, does not even mention the Admiralty Extension Act. Petitioner furnishes no citation to the unreported, oral opinion from the District Court, but since the compensation claimant was injured working on board a vessel partially aground in navigable waters, the case is not in point.

The remaining cases cited by Petitioner on this point are tort cases involving liability suits against shipowners, which the Admiralty Extension Act was specifically enacted to cover. These cases are not material to the issue before this Court.

For a detailed analysis of the legislative history of both the Longshoremen's Act and the Admiralty Extension Act, reference is again made to Judge Watkins' opinion in *Johnson* v. *Traynor,* 243 F. Supp. 184, 188-197 (D. Md. 1965).

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

CARL G. STEARNS
S. G. KOLIUS
ED BLUESTEIN, JR.
Bank of the Southwest Building
Houston, Texas 77002
Attorneys for Respondents
Crown Stevedoring Company
and Texas Employers'
Insurance Association

Of Counsel:

FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI

December, 1967

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing brief in opposition were mailed to Mr. Arthur J. Mandell and Mr. Herman Wright, Mandell & Wright, 707 South Coast Building, Houston, Texas 77002, counsel for petitioner, with first class postage prepaid, and to the Solicitor General, Mr. John C. Eldridge and Mr. Leavenworth Colby, Department of Justice, Washington, D. C. 20530, with air mail postage prepaid, and to Mr. Jack Shepherd, Assistant United States Attorney, Federal Office Building, 515 Rusk Avenue, Houston, Texas 77002, with first class postage prepaid, by depositing same in the United States mail, properly stamped and addressed, on this 20th day of December, 1967.

CARL G. STEARNS